

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN HARDNEY,

No. 2:21-cv-0509 AC P

Plaintiff,

v.

ORDER

KATHLEEN ALLISON, et al.,

Defendants.

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF Nos. 2, 4. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 II. Statutory Screening of Prisoner Complaints

4 The court is required to screen complaints brought by prisoners seeking relief against a
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
6 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
7 “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[]
8 monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

9 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
11 Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal
12 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,
13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
14 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
15 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
16 Franklin, 745 F.2d at 1227-28 (citations omitted).

17 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
18 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
19 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550
20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
21 “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
22 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman,
23 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
24 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a
25 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the
26 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain
27 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
28 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
 3 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
 4 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
 5 content that allows the court to draw the reasonable inference that the defendant is liable for the
 6 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
 7 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
 8 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
 9 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
 10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

11 III. Complaint

12 The complaint alleges that defendants Cabrera, Lujan, Blas, Chavez, Chima, Buckley,
 13 Garcia, Pierce, Bales, Sabala, and Allison violated plaintiff’s rights under the First, Fourth,
 14 Eighth, and Fourteenth Amendments, as well as under the Prison Rape Elimination Act (PREA).
 15 ECF No. 1. Specifically, plaintiff alleges that on April 12, 2019, about two hours after taking a
 16 shower, he was called to the Program Office and told that he was going to administrative
 17 segregation for indecent exposure based on Cabrera’s report that he had exposed himself to her
 18 from the shower while she was assisting in the control tower. Id. at 11, ¶¶ 1-4. At his
 19 disciplinary hearing on May 14, 2019, Bales found plaintiff guilty of indecent exposure based
 20 solely on Cabrera’s report. Id. at 11-12, ¶¶ 6-7. In July 2019, plaintiff contacted the PREA
 21 auditor and he was visited by an investigator on August 11, 2019, which resulted in the cuff port
 22 in the shower being covered. Id. at 12, ¶ 7.

23 After plaintiff was escorted to administrative segregation due to the indecent exposure
 24 charges, he was put in a holding cage. Id. at 12, ¶ 9. Lujan and Chima then came to handcuff
 25 plaintiff and removed him from the cage. Id., ¶¶ 10-11. When plaintiff had taken about three or
 26 four steps out of the holding cage Lujan and Chima lifted him off the ground and slammed his
 27 face into the cement floor, causing injuries to his face and shoulder. Id., ¶ 11. He then lay on the
 28 ground with Lujan and Chima on top of him while Chavez, Buckley, and Pierce observed and did

1 nothing to intervene. Id. at 13, ¶ 12. These defendants then proceeded to fabricate an assault on
2 staff charge against plaintiff. Id., ¶¶ 12-16.

3 The incident reports from the use of force showed that Blas was assigned as the
4 investigative employee and prepared a report on May 14, 2019, and that Chavez was assigned as
5 plaintiff's staff assistant, though plaintiff did not receive any assistance.¹ Id. at 14, ¶¶ 18-19.
6 When plaintiff found out that Blas worked with Lujan and Chima, he told Blas to step down as
7 investigative employee, which Blas agreed to do. Id., ¶¶ 21-22. However, plaintiff appears to
8 allege that instead, Blas stayed on as investigative employee and conducted only a partial
9 investigation. Id., ¶ 23. At the disciplinary hearing for the assault charge, plaintiff informed
10 Sabala, who was acting as the hearing officer, that Blas had obstructed his defense by failing to
11 interview witnesses. Id. at 15, ¶ 24. Sabala then left to conduct his own investigation and
12 returned thirty minutes later with Lujan and Chavez. Id., ¶¶ 25-26. Upon his return, Sabala
13 allowed Lujan to alter his statement and told plaintiff that he would assume that plaintiff's
14 witnesses would have said that plaintiff did not assault Lujan. Id., ¶ 26. Sabala then found
15 plaintiff guilty of assaulting staff. Id., ¶ 27. Plaintiff seeks damages and injunctive relief. Id. at
16 17, 19-20, 22.

17 **IV. Claim I**

18 In Claim I, plaintiff alleges that defendants Cabrera, Bales, and Allison retaliated against
19 him. ECF No. 1 at 16-17. A viable First Amendment claim for retaliation must establish the
20 following five elements: "(1) An assertion that a state actor took some adverse action against an
21 inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the
22 inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a
23 legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
24 (footnote and citations omitted).

25 Plaintiff alleges that Cabrera wrote him up for indecent exposure because he filed a staff
26 misconduct claim against her for glaring at him in the shower. ECF No. 1 at 16. However, he

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28 ¹ In several places the complaint indicates dates in 2009. ECF No. 1 at 14-15, ¶¶ 17-19, 24.
These appear to be typographical errors.

1 also alleges that his shower was completed “without incident,” that he was called in on the
2 charges only two hours after his shower, and that he did not file his PREA complaint until
3 approximately three months after he was written up. Id. at 11-12. Plaintiff’s PREA complaint
4 cannot serve as the basis for Cabrera’s alleged retaliation because it occurred after plaintiff was
5 written up, and to the extent he alleges Cabrera’s conduct was prompted by another complaint, it
6 is unclear when the complaint was made or that Cabrera was aware of the complaint such that it
7 could have motivated her conduct. Plaintiff similarly fails to state a claim for retaliation against
8 Bales because there are no allegations that Bales found him guilty of the indecent exposure
9 charge because of some protected conduct, and to the extent plaintiff is attempting to claim he
10 was found guilty due to complaints against Cabrera, the PREA complaint occurred after the
11 disciplinary hearing and plaintiff has not identified when he made any other complaints or alleged
12 facts demonstrating that such complaints motivated Bales to find him guilty. With regard to
13 defendant Allison, plaintiff alleges only that “on Appeal the Director/Secretary K. Allison
14 appear[s] to routinely confirm this type of arbitrary practice.” Id. at 17. This allegation fails to
15 establish any adverse action against plaintiff, let alone that such action was motivated by
16 protected conduct.

17 V. Claim II

18 In Claim II, plaintiff alleges that defendants Cabrera, Bales, and Allison violated his right
19 to privacy under the Fourth Amendment, his right to be protected from the view of the opposite
20 sex without a legitimate penological reason in violation of the Eighth Amendment, and his rights
21 under the PREA. ECF No. 1 at 18-19.

22 A. Fourth Amendment

23 The Ninth Circuit has recognized that “incarcerated prisoners retain a limited right to
24 bodily privacy.” Michenfelder v. Sumner, 860 F.2d 328, 333 (9th Cir. 1988). However, while
25 the “circuit’s law respects an incarcerated prisoner’s right to bodily privacy, [it] has found that
26 assigned positions of female guards that require only infrequent and casual observation, or
27 observation at distance, and that are reasonably related to prison needs are not so degrading as to
28 warrant court interference.” Id. at 334 (citing Grummert v. Rushen, 779 F.2d 491, 494-95 (9th

1 Cir. 1985). Plaintiff's allegation that Cabrera "glared" at him during his shower from thirty yards
2 away with an obstructed view while she was assisting in the control tower is insufficient to state a
3 claim for violation of plaintiff's right to privacy. See id. ("Evidence of female officers' role in
4 shower duty . . . did not establish an inappropriate amount of contact with disrobed prisoners.");
5 Grummett, 779 F.2d at 494-95 (no violation of privacy where female guards were assigned to
6 positions where they observed unclothed male inmates when positions "require[d] infrequent and
7 casual observation, or observation at a distance").

8 B. Eighth Amendment

9 "Although prisoners have a right to be free from sexual abuse, . . . , the Eighth
10 Amendment's protections do not necessarily extend to mere verbal sexual harassment." Austin v.
11 Terhune, 367 F.3d 1167, 1171 (9th Cir. 2004) (internal citation omitted). While "the Ninth
12 Circuit has recognized that sexual harassment may constitute a cognizable claim for an Eighth
13 Amendment violation, the Court has specifically differentiated between sexual harassment that
14 involves verbal abuse and that which involves allegations of physical assault, finding the latter to
15 be in violation of the constitution." Minifield v. Butikofer, 298 F. Supp. 2d 900, 904 (N.D. Cal.
16 2004) (citing Schwenk v. Hartford, 204 F.3d 1187, 1198 (9th Cir. 2000)); Austin, 367 F.3d at
17 1171-72 (officer's conduct was not sufficiently serious to violate the Eighth Amendment where
18 officer exposed himself to prisoner but never physically touched him).

19 In general, allegations of verbal harassment or abuse do not state a cognizable claim under
20 § 1983. Freeman v. Arpaio, 125 F.3d 732, 738 (9th Cir. 1997); Somers v. Thurman, 109 F.3d
21 614, 624 (9th Cir. 1997) (found inmate failed to state a claim where female correction officers
22 pointed, joked, and "gawked" at an inmate while he showered). Plaintiff's only allegation is that
23 defendant Cabrera did not announce her presence when she entered the control tower and then
24 "glared" at plaintiff from approximately thirty yards away while he was in the shower. Based on
25 the facts alleged, plaintiff cannot state a claim for sexual harassment in violation of the Eighth
26 Amendment because there was no physical contact or even verbal exchange between plaintiff and
27 Cabrera or any other defendant.

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1 C. PREA Violation

2 “In order to seek redress through § 1983, . . . a plaintiff must assert the violation of a
 3 federal *right*, not merely a violation of federal *law*.” Blessing v. Freestone, 520 U.S. 329, 340
 4 (1997) (emphasis in original) (citing Golden State Transit Corp. v. Los Angeles, 493 U.S. 103,
 5 106 (1989). The PREA, 42 U.S.C. § 15601-15609, “authorizes the reporting of incidents of rape
 6 in prison, allocation of grants, and creation of a study commission,” but there is nothing in the
 7 PREA to indicate that it created a private right of action, enforceable under § 1983 or otherwise.
 8 Porter v. Jennings, No. 1:10-cv-01811-AWI-DLB PC, 2012 WL 1434986, at *1, 2012 U.S. Dist.
 9 LEXIS 58021, at *3 (E.D. Cal. Apr. 25, 2012) (collecting cases); see also Law v. Whitson, No.
 10 2:08-cv-0291-SPK, 2009 WL 5029564, at *4, 2009 U.S. Dist. LEXIS 122791, at *9 (E.D. Cal.
 11 Dec. 15, 2009); Bell v. County of Los Angeles, No. CV 07-8187-GW(E), 2008 WL 4375768, at
 12 *6, 2008 U.S. Dist. LEXIS 74763, *16 (C.D. Cal. Aug. 25, 2008); Inscoe v. Yates, No. 1:08-cv-
 13 001588 DLB PC, 2009 WL 3617810, at *3, 2009 U.S. Dist. LEXIS 108295, *8 (E.D. Cal. Oct.
 14 28, 2009). Since the Act itself contains no private right of action, nor does it create a right
 15 enforceable under § 1983, to the extent plaintiff is attempting to allege a PREA violation against
 16 defendants Cabrera, Bales, and Allison, he fails to state a claim for relief.

17 VI. Claim III

18 Claim III alleges that defendants Lujan, Chima, Blas, Chavez, Buckley, and Pierce
 19 violated plaintiff’s rights under the Eighth Amendment when Lujan and Chima used excessive
 20 force against him and Blas, Chavez, Buckley, and Pierce failed to intervene. ECF No. 1 at 19-20.

21 Plaintiff’s allegations are sufficient to state claims for excessive force against Lujan and
 22 Chima. See Hudson v. McMillian, 503 U.S. 1, 6-7 (1992) (force is excessive if used “maliciously
 23 and sadistically to cause harm” (citation omitted)). However, he has failed to state a claim for
 24 failure to protect against Blas, Chavez, Buckley, and Pierce. Lujan and Chima’s use of force
 25 consisted of a single incident of slamming plaintiff to the ground. There are no facts showing that
 26 the other defendants knew Lujan and Chima were going to use force on plaintiff or that the use of
 27 force was of a prolonged nature such that they would have had the ability to intervene. See
 28 Farmer v. Brennan, 511 U.S. 825, 834 (1994) (internal quotation marks and citations omitted)

1 (Eighth Amendment violated where prison official is deliberately indifferent to serious risk of
2 harm). To the extent plaintiff's claim is premised on the fact that Lujan and Chima continued to
3 hold him down after slamming him into the ground, there are no facts demonstrating that the
4 other defendants were aware that plaintiff was being held down in a way that put him at serious
5 risk of harm.

6 VII. Claim IV

7 In Claim IV, plaintiff alleges that defendants Bales, Sabala, Blas, Chavez, Garcia, and
8 Allison violated his due process rights in relation to his disciplinary proceedings related to the
9 indecent exposure and assault charges. ECF No. 1 at 20-21.

10 "Prison disciplinary proceedings are not part of a criminal prosecution, and the full
11 panoply of rights due a defendant in such proceedings does not apply." Wolff v. McDonnell, 418
12 U.S. 539, 556 (1974). However, an inmate subject to disciplinary sanctions that include the loss
13 of good time credits must receive certain procedural protections, including the opportunity to call
14 witnesses and a sufficiently impartial factfinder. See id. at 563-66, 570-71 (outlining required
15 procedural protections). In this case, plaintiff has not alleged the loss of any good time credits,
16 and the Wolff court noted that its decision was not meant to "suggest . . . that the procedures
17 required . . . for the deprivation of good time would also be required for the imposition of lesser
18 penalties such as the loss of privileges." Id. at 571 n.19. Since plaintiff does not allege the loss
19 of any good-time credits, he may also demonstrate that he is entitled to the due process outlined
20 in Wolff by alleging facts showing that the disciplinary caused a change in confinement that
21 "impose[d] atypical and significant hardship on [him] in relation to the ordinary incidents of
22 prison life." Sandin v. O'Conner, 515 U.S. 472, 484 (1995). Since plaintiff has failed to make
23 any allegations regarding the penalties he received as a result of the two disciplinaries, he has not
24 established he suffered an atypical and significant hardship and therefore fails to state a claim for
25 the denial of due process.

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1 VIII. Injunctive Relief

2 The Ninth Circuit has held that

3 a corrections department secretary and prison warden were proper
4 defendants in a § 1983 case because “[a] plaintiff seeking injunctive
5 relief against the State is not required to allege a named official’s
6 personal involvement in the acts or omissions constituting the
7 alleged constitutional violation. Rather, a plaintiff need only
8 identify the law or policy challenged as a constitutional violation
9 and name the official within the entity who can appropriately
10 respond to injunctive relief.”

11 Colwell v. Bannister, 763 F.3d 1060, 1070 (9th Cir. 2014) (alteration in original) (quoting
12 Hartmann v. Cal. Dep’t of Corr. & Rehab., 707 F.3d 1114, 1127 (9th Cir. 2013)). Plaintiff has
13 indicated that he has named defendants Bales, Sabala, and Allison in their official capacities and
14 seeks injunctive relief requiring that the CDCR “eliminate all fraudulent reports/documents
15 regarding Indecent Exposure and Assault on Staff.” ECF No. 1 at 22. He also requests a
16 protective order requiring defendant Allison to “stop the constant Sexual Abuse imposed upon
17 Plaintiff.” Id. However, plaintiff has not alleged facts showing that he was subject to sexual
18 abuse or that his disciplinary reports were fraudulent, let alone that there was a law, policy, or
19 practice in effect that led to the violation of his constitutional rights. Accordingly, he has failed to
20 allege facts that would support a claim for injunctive relief.

21 IX. Leave to Amend

22 For the reasons set forth above, the court finds that the complaint states a cognizable claim
23 for excessive force against defendants Lujan and Chima only. All other allegations are
24 insufficient to support cognizable claims for relief against any defendant. However, it appears
25 that plaintiff may be able to allege facts to remedy this and he will be given the opportunity to
26 amend the complaint if he desires.

27 Plaintiff may proceed forthwith to serve defendants Lujan and Chima on his excessive
28 force claim or he may delay serving any defendant and amend the complaint.

29 Plaintiff will be required to complete and return the attached notice advising the court how
30 he wishes to proceed. If plaintiff chooses to amend the complaint, he will be given thirty days to
31 file an amended complaint. If plaintiff elects to proceed on his excessive force claims against

1 defendants Lujan and Chima without amending the complaint, the court will proceed to serve the
2 complaint. A decision to go forward without amending the complaint will be considered a
3 voluntarily dismissal without prejudice of all other claims and defendants.

4 If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions
5 about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode,
6 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how each named
7 defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981).
8 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
9 connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy,
10 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, “[v]ague and conclusory allegations of official
11 participation in civil rights violations are not sufficient.” Ivey v. Bd. of Regents, 673 F.2d 266,
12 268 (9th Cir. 1982) (citations omitted).

13 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
14 his amended complaint complete. Local Rule 220 requires that an amended complaint be
15 complete in itself without reference to any prior pleading. This is because, as a general rule, an
16 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
17 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
18 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
19 in subsequent amended complaint to preserve appeal). Once plaintiff files an amended complaint,
20 the original complaint no longer serves any function in the case. Therefore, in an amended
21 complaint, as in an original complaint, each claim and the involvement of each defendant must be
22 sufficiently alleged.

23 X. Plain Language Summary of this Order for a Pro Se Litigant

24 Your request to proceed in forma pauperis is granted and you are not required to pay the
25 entire filing fee immediately.

26 Some of the allegations in the complaint state claims against the defendants and some do
27 not. Your excessive force claim against Lujan and Chima is sufficient to require a response. You
28 have not alleged enough facts to state any other claims for relief.

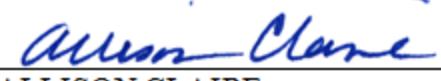
1 You have a choice to make. You may either (1) proceed immediately on your excessive
2 force claim against Lujan and Chima and voluntarily dismiss the other claims and defendants or
3 (2) try to amend the complaint. If you want to go forward without amending the complaint, you
4 will be voluntarily dismissing without prejudice all claims and defendants except the excessive
5 force claim against Lujan and Chima. If you choose to amend your complaint, the amended
6 complaint must include all of the claims you want to make, including the ones that have already
7 been found to state a claim, because the court will not look at the claims or information in the
8 original complaint. **Any claims and information not in the amended complaint will not be**
9 **considered.** You must complete the attached notification showing what you want to do and
10 return it to the court. Once the court receives the notice, it will issue an order telling you what
11 you need to do next (i.e. file an amended complaint or wait for defendants to be served).

12 In accordance with the above, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's request for leave to proceed in forma pauperis, ECF No. 2, is GRANTED.
- 14 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
15 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
16 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
17 Director of the California Department of Corrections and Rehabilitation filed concurrently
18 herewith.
- 19 3. Plaintiff's claims against defendants Cabrera, Blas, Chavez, Buckley, Garcia, Pierce,
20 Bales, Sabala, and Allison do not state claims for which relief can be granted.
- 21 4. Plaintiff has the option to proceed immediately on his excessive force claim against
22 defendants Lujan and Chima as set forth in Section V.I. above, or to amend the complaint.
- 23 5. Within fourteen days of service of this order, plaintiff shall complete and return the
24 attached form notifying the court whether he wants to proceed on the screened complaint or
25 whether he wants to file a first amended complaint. If plaintiff does not return the form, the court
26 will assume that he is choosing to proceed on the complaint as screened and will recommend
27 dismissal without prejudice of the claims against Cabrera, Blas, Chavez, Buckley, Garcia, Pierce,
28 Bales, Sabala, and Allison.

1 6. Plaintiff's motion to serve the complaint, ECF No. 7, is GRANTED to the extent that
2 plaintiff may choose to proceed immediately on his claims against defendants Lujan and Chima.
3 The motion is otherwise DENIED.

4 DATED: October 12, 2021

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN HARDNEY,

No. 2:21-cv-0509 AC P

Plaintiff,

v.

KATHLEEN ALLISON, et al.,

PLAINTIFF'S NOTICE ON HOW TO
PROCEED

Defendants.

Check one:

Plaintiff wants to proceed immediately on his excessive force claim against defendants Lujan and Chima without amending the complaint. Plaintiff understands that by going forward without amending the complaint he is voluntarily dismissing without prejudice his claims against defendants Cabrera, Blas, Chavez, Buckley, Garcia, Pierce, Bales, Sabala, and Allison pursuant to Federal Rule of Civil Procedure 41(a).

Plaintiff wants to amend the complaint.

DATED: _____

John Hardney
Plaintiff pro se